

HOUSE JUDICIARY COMMITTEE AMENDMENT

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 2320*

House Bill No. 2381

FILED

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by deleting all of the language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 39-17-1315, is amended by deleting such section in its entirety.

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 17, Part 13, is amended by adding Sections 3 through 12 of this act as new sections thereto.

SECTION 3. (a) Any resident of Tennessee who has reached the age of majority may apply to the department of safety for a handgun carry permit. If the applicant is not prohibited from owning a firearm in this state or under federal law and the applicant otherwise meets all of the requirements of this section, the department shall issue a permit to the applicant.

(b) The application for a permit shall be on a standard form developed by the department of safety and shall require the applicant to disclose, under oath, only the following information concerning the applicant:

- (1) full legal name and any aliases;
- (2) addresses for the last five (5) years;
- (3) date of birth;
- (4) social security number;
- (5) physical description (height, weight, race, sex, hair color and eye color);
- (6) whether the applicant has been convicted of a criminal offense punishable for a term exceeding one (1) year;

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(7) whether the applicant is currently under indictment or information of any criminal charge punishable for a term exceeding one (1) year;

(8) whether the applicant is currently subject to any order of protection and, if so, the applicant shall provide a copy of such order;

(9) whether the applicant is a fugitive from justice;

(10) whether the applicant is addicted or has been addicted to alcohol, drugs, or controlled substances;

(11) whether the applicant has ever been hospitalized because of mental illness or alcohol or drug problems; and

(12) whether the applicant has ever been adjudicated mentally ill and/or had a conservator appointed by a court for his or her benefit.

(c) In addition to the information required under subsection (b), the department shall be required to take fingerprints of the applicant for the purpose of conducting the Tennessee Bureau of Investigation and Federal Bureau of Investigation criminal history record checks authorized by this section. The department shall also be required to photograph the applicant in a manner that is suitable for use on the permit.

(d) The department shall also require an applicant to submit proof of a department approved handgun safety and training course. Such course shall include both classroom training and firing range training.

(e) The department shall make applications for permits available for distribution at any location where the department conducts driver license examinations.

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(f) Upon receipt of an application, the department shall notify the chief law enforcement officer of the applicant's county of residence that the applicant has requested a permit. The chief law enforcement officer shall conduct a background investigation regarding the applicant. The background investigation shall be limited to those matters which this section requires the applicant to disclose and whether the applicant has failed to disclose specific facts which are required to be disclosed by Section 3(b)(1) through Section 3(b)(9) of this act. The chief law enforcement officer shall also submit a report to the department containing any readily discoverable information that such officer feels may be pertinent to the applicant regarding those matters enumerated in Section 3(b)(10) through Section 3(b)(12) of this act. The chief law enforcement officer shall file such reports with the department within fifteen (15) days after the date such officer receives a copy of the application.

(g) The department shall deny a permit if the department determines that the applicant has not accurately disclosed any material information required to be disclosed by the applicant, that the applicant fails to meet the requirements of this section, or that the applicant, because of mental illness, alcohol or drug problems, or physical infirmity, poses a material likelihood of risk of harm to the public. The following shall not be grounds to deny a permit:

- (1) The existence of any arrest or other records for any indictment, charge or warrant which has been judicially or administratively expunged;
- (2) A conviction for which the applicant has received a pardon;
- (3) A conviction which has been judicially expunged or otherwise set aside;

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(4) A charge or conviction for which the applicant's civil rights have been restored pursuant to Title 40, Chapter 29;

(5) A history reflecting that the applicant was addicted to alcohol, drugs or any controlled substances if the applicant can demonstrate that it has been more than five (5) years since he or she was last so addicted;

(6) A conviction for any non-violent crime if it has been more than five (5) years since the applicant successfully completed the provisions of any imposed sentence, probation and restitution imposed for such offense; or

(7) Any prior denial, suspension or revocation of a handgun carry permit by this or any other state if it has been more than five (5) years since such denial, suspension or revocation.

(h) If the department denies an application, the department shall notify the applicant in writing within ten (10) days of such denial. The written notice shall state the specific factual basis for the denial. In shall include a copy of any reports, records and/or inquiries reviewed or relied upon by the department.

(i) The department shall issue a permit to an applicant not otherwise prohibited from obtaining a permit under this section no later than thirty (30) days after the results of the fingerprint checks required in subsection (c) of this section and the sheriff's report required in subsection (g) of this section are both received by the department.

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(j) A permit holder shall not be required to complete a handgun training course to maintain or renew a handgun carry permit. No permit holder shall be required to complete any additional handgun safety course after obtaining a handgun carry permit.

(k) A permit issued pursuant to this section shall be good for four (4) years and shall entitle the permit holder to carry any handgun(s) which the permit holder legally owns or possesses.

(l) The permit shall be issued on a wallet-sized laminated card of the same approximate size used by the state of Tennessee for driver licenses and shall contain only the following information concerning the permit holder:

- (1) The permit holder's name, address, date of birth and social security number;
- (2) A description of the permit holder by sex, height, weight and eye color;
- (3) A color photograph of the permit holder; and
- (4) The permit number and expiration date.

(m) The department shall charge an application and processing fee of one hundred dollars (\$100). Such fee shall cover all aspects of processing the application and issuing a permit.

(n) Substantial compliance with the requirements of this section shall provide the department and any political subdivision thereof with immunity from civil liability alleging liability for issuance of the permit.

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(o) Prior to the expiration of a permit, a permit holder may apply to the department for the renewal of a permit by submitting, under oath, a renewal application with a renewal fee of fifty dollars (\$50.00). The renewal application shall be on a standard form developed by the department of safety and shall require the applicant to disclose, under oath, the information concerning the applicant as set forth in subsection (b) and shall require the applicant to certify that such applicant still satisfies all the requirements of this section for the issuance of a permit. In the event the permit expires prior to the department's approval or issuance of notice of denial regarding such renewal application, the permit holder shall be entitled to continue to use the expired permit, provided that the permit holder shall also be required to prove by displaying a receipt for the renewal application fee that the renewal application was delivered to the department prior to the expiration date of the permit.

SECTION 4. (a) The department is hereby authorized to suspend or revoke a handgun permit upon a showing by its records or other sufficient evidence that the permittee:

- (1) Has not accurately disclosed any material information required by Section 3 of this act;
- (2) Poses a material likelihood of risk of harm to the public;
- (3) Has been convicted of a felony; or
- (4) Has violated any other provision of this act.

(b) Upon the suspension or revocation of a permit, the permittee must surrender such permit to the department.

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(c)(1) The department, upon suspending or revoking a permit, shall require that such permit be surrendered to and be retained by the department. Prior to the reissuance of a suspended permit, the department may require the permittee to submit evidence that the permittee has completed a program of alcohol or drug abuse education, or has completed treatment by a physician, board certified or eligible in psychiatry, or a licensed psychologist certified with competence in clinical psychology; or at a facility licensed by the department of mental health and mental retardation to provide such treatment. Certification of the psychiatrist or clinical psychologist or facility licensed by the department of mental health and mental retardation under this section is not to be construed as a prediction of future behavior but merely certification of completion of the program. The department may not require a permittee to submit such evidence unless such evidence is relevant to the grounds for the suspension or revocation of such permit.

(2) When such examination, as required by this subsection, is administered by a state supported mental health facility, such facility and medical doctors or doctors of psychology employed by such facility who administer such examinations within the course and scope of such doctor's authority under the statute, shall be immune from tort liability for the proper dissemination of any report or findings to the department of safety which results from such examination; provided, that this immunity shall not extend to any other person, institution, or other member of the private sector, not employed or attached to a state supported mental health facility.

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(d) The applicant shall have a right to request an administrative hearing pursuant to Title 4, Chapter 5, or to bring a mandamus action to challenge such suspension or revocation of a permit.

SECTION 5. (a) Any person who has received a notice of suspension or revocation may make a written request for a review of the department's determination by the department at a hearing. The request shall be made on a form available from the department. If the person's permit has not been previously surrendered, it must be surrendered at the time the request for a hearing is made. A request for a hearing does not stay the permit suspension or revocation.

(b) Within thirty (30) days from the date the request for a hearing is filed, the department shall establish a hearing date and set the case on a docket. Nothing in this section shall be construed as requiring the hearing to be conducted within such thirty (30) day period. The hearing shall be held at a place designated by the department. The department shall provide written notice of the time and place of the hearing to the party requesting the hearing at least ten (10) days prior to the scheduled hearing, unless the party agrees to waive this requirement.

(c) The presiding hearing officer shall be the commissioner or an authorized representative designated by the commissioner. The presiding hearing officer shall have the authority to:

- (1) Administer oaths and affirmations;
- (2) Examine witnesses and take testimony;
- (3) Receive relevant evidence;

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(4) Issue subpoenas, take depositions, or cause depositions to interrogatories to be taken;

(5) Regulate the course and conduct of the hearing; and

(6) Make a final ruling on the issue.

(d) The sole issue at the hearing shall be whether by a preponderance of the evidence the person has violated any provision of this act. If the presiding hearing officer finds the affirmative of this issue, the suspension or revocation order shall be sustained. If the presiding hearing officer finds the negative of this issue, the suspension or revocation order shall be rescinded.

(e) The hearing shall be recorded. The decision of the presiding hearing officer shall be rendered in writing, and a copy will be provided to the person who requested the hearing.

(f) If the person who requested the hearing fails to appear without just cause, the right to a hearing shall be waived, and the department's earlier determination shall be final.

(g) Witnesses under subpoena shall be entitled to the same fees as are now or may hereafter be provided for witnesses in civil actions in the circuit court and, unless otherwise provided by law or by action of the agency, the party requesting the subpoenas shall bear the cost of paying fees to the witnesses subpoenaed.

SECTION 6. (a) Within thirty (30) days of the issuance of the final determination of the department following a hearing under Section 5 of this act, a person aggrieved by the determination shall have the right to file a petition in the chancery court of the county of the

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person's residence for judicial review. The filing of a petition for judicial review shall not stay the revocation order.

(b) The review shall be on the record, without taking additional testimony. If the court finds that the department exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the department's determination.

SECTION 7. The Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, applies to the extent it is consistent with the proceedings under Sections 5 and 6 of this act relating to administrative hearing and judicial review.

SECTION 8. The department shall issue a duplicate permit to a permit holder upon the payment by the permit holder of a fee of five dollars (\$5.00).

SECTION 9. Within sixty (60) days of any change in a permit holder's principal place of residence, the permit holder shall notify the department in writing of such permit holder's new address.

SECTION 10. (a) All permits issued on or after October 1, 1994, pursuant to the former provisions of this section shall continue to be valid under this act. At the request of a permit holder, new permit cards shall be issued subject to the applicant meeting the renewal provisions of this act.. All such permits shall expire four (4) years from the date of issuance unless revoked or suspended pursuant to the provisions of this act.

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(b)(1) Except as provided in subdivision (2), the sheriff and/or chief law enforcement officer of each county shall retain until January 1, 2001, all applications and files related to the approval or denial of any application submitted from October 1, 1994, to the effective date of this act. Such applications and files shall be destroyed after January 1, 2001.

(2) The sheriff and/or chief law enforcement officer may retain applications and files related to the approval or denial of any application submitted from October 1, 1994 to the effective date of this act if such applications and files are relevant to any pending litigation. After such pending litigation is concluded, such applications and files shall be destroyed.

(c) A violation of this act is a Class B misdemeanor punishable only by a fine not to exceed five hundred dollars (\$500).

(d) Any party aggrieved under the terms of this act by the denial, suspension and/or revocation of a permit, or otherwise, may file a writ of mandamus, as provided by law. Such action shall also allow the recovery of any actual damages sustained by the party. The aggrieved party, if prevailing in action, shall also be entitled to recover those costs and attorney's fees reasonably incurred or relating to such action.

(e) Nothing contained in this section shall be construed to alter, reduce or eliminate any personal civil or criminal liability that an applicant may have for the intentional or negligent use of a firearm.

SECTION 11. An individual, corporation, business entity or local, state or federal government entity or agent thereof is authorized to prohibit possession of weapons by any person otherwise authorized by this subsection, at meetings conducted by, or on premises

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owned, operated, managed or under control of such individual, corporation, business entity or government entity. Notice of such prohibition shall be posted or announced.

SECTION 12. The department of safety is authorized to promulgate rules and regulations pursuant to Title 4, Chapter 5, to implement the provisions of this act.

SECTION 13. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect October 1, 1996, the public welfare requiring it.